

§ 1180.11

the application. Benchmarking is intended to provide an historic monthly baseline against which actual post-transaction levels of performance can be measured. Benchmarking data should be sufficiently detailed and encompassing to give a meaningful picture of operational performance for the newly merged system. Applicants will report in a matrix structure giving the historic monthly (benchmark) data and provide for the reporting of actual monthly data during the monitoring period. It is important that data reflect uniformly constructed measures of historic and post-transaction operations. Minimum benchmark data include:

(1) *Corridor performance benchmarking.* Benchmarks will consist of route level performance information including flow data for traffic moving on the applicants' systems. These data will encompass flows to and from major points. A major point could be a Bureau of Economic Analysis (BEA) statistical area, or it can be a railroad-created point based on an operational grouping of stations or interchanges, or it could be another similar construction. It will be necessary for applicants to define traffic points used to establish benchmarks for purposes of monitoring. A sufficient number of corridor flows must be reported so as to fully represent system flows, including interchanges with short lines and other Class I's, and internal traffic of the respective applicants before the transaction. In addition to identifying traffic flows by areas, they also must be identified by commodity sector (for example, merchandise, intermodal, automotive, unit coal, unit grain etc.). Data for each flow must include: traffic volume in carloads (units), miles (area to area), and elapsed time in hours. Only loaded traffic need be included.

(2) *Yard and terminal benchmarking—*
(i) *Terminal dwell.* Terminal dwell for major yards will be calculated in hours for cars handled, not including run-through and bypass trains or maintenance of way and bad order cars.

(ii) *On time originations by major yard.* On time originations are based on the departure of scheduled trains originating at a particular yard.

(3) *System benchmarking.* (i) Cars on line.

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(ii) Average train velocity, by train type.

(iii) Locomotive fleet size and applicable bad order ratios.

(iv) Passenger train performance for commuter and intercity passenger services.

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§ 1180.11 Transnational and other informational requirements.

(a) For applicants whose systems include operations in Canada or Mexico, applicants must explain how cooperation with the Federal Railroad Administration would be maintained to address potential impacts on operations within the United States of operations or events elsewhere on their systems.

(b) All applicants must assess whether any restrictions or preferences under foreign or domestic law or policies could affect their commercial decisions, and discuss any ownership restrictions applicable to them.

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Subpart B—Transfer or Operation of Lines of Railroads in Reorganization

§ 1180.20 Procedures.

(a) Transactions under 11 U.S.C. 1172, for the transfer or operation of lines of bankrupt railroads under a plan of reorganization are governed by the following procedures:

(1) If the buyer or operator is not a carrier, the Notice of Exemption procedures in subpart D of part 1150 of this title.

(2) If the buyer or operator is a carrier, either:

(i) The application procedures in subpart A of this part; or,

(ii) The procedures in part 1121 of this title for a petition to exempt the transaction from prior approval requirements of 49 U.S.C. 11323 *et seq.*

(b) The Board will establish or modify its existing procedures and deadlines as necessary in each proceeding to comply with appropriate orders of the Bankruptcy Court.

(c) Under 11 U.S.C. 1172(c)(1), the Board is required to provide affected employees with adequate protection. The Board will impose the minimum